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*Supreme Court of Kansas.*DAVID H. MITCHELL v. THE BOARD OF COUNTY COMMISSIONERS,
OF LEAVENWORTH COUNTY *et al.*

When a party has a general deposit of current funds in a bank, and on the 28th day of February gives a check for such funds payable in legal tender notes, and notes of that character are handed to him, and he makes a special deposit of such notes in the same bank, and three days afterward changes his special deposit of legal tender notes into a general deposit of current funds, and where the whole transaction is for the sole and express purpose of escaping taxation on such deposit: *Held*, That as to the government, the transaction was void, and the actor not entitled to the intervention of the courts to be relieved from the taxes imposed on such deposits.

This was a bill to restrain the defendants from the collection of certain personal taxes outstanding on the tax roll of the county.

In June, 1870, plaintiff, who was a citizen and resident of Leavenworth county, made out and returned to the county clerk a statement of his personal property, money and effects liable to taxation.

On February 28th, 1870, plaintiff had on deposit in the banking house of Scott & Co., in Leavenworth, the sum of \$19,350 in current funds belonging to himself, and on that day he gave said house a check for his entire deposits, payable to himself, in United States legal tender treasury notes, commonly called greenbacks, and the plaintiff then received said amount in said legal tender notes, and inclosed them in a sealed envelope and immediately returned them thus sealed up to the bank, and afterward, on the 3d day of March, 1870, the plaintiff deposited all of said money with said bank, as a general and ordinary deposit of current funds.

No part of said sum was included in the statement returned as aforesaid to the county clerk.

The funds thus on deposit by the plaintiff were drawn out of the bank as aforesaid, and left on special deposit, and re-deposited as aforesaid by the plaintiff for the sole and express purpose of escaping taxation on the funds so belonging to him, for the year 1870.

Subsequently, on October 22d, 1870, an examination was

had of the plaintiff and other persons, and on the ascertainment of the foregoing facts the assessment against the plaintiff was raised. It was to enjoin the collection of the tax on this part of the assessment that plaintiff filed this bill. The District Court on bill and answer dissolved the preliminary injunction and dismissed the bill.

Pender and Goddard for plaintiff.

F. P. Fitzwilliam for defendants.

The principle of equality and justice requires that each person should contribute toward the public expenses his proportional share, according to the advantages which he receives, as it lies at the foundation of our political existence. *Knowlton v. Supervisors*, 9 Wis. 418. *Case of the Mayor of New York*, 11 Johns. 80.

The attempt of plaintiff to change his banking account into a special deposit of legal tender notes was a trick, and void as against public policy. *Wheeler v. Russell*, 17 Mass. 258; Broom's Legal Max. (6 Am. ed.) 540.

That United States legal tender notes are exempt from taxation is conceded to be the law of the land. The tax, about which complaint is made, was not a tax assessed on property exempt under the laws of the United States. It was a tax assessed under the laws of the State on certain taxable property belonging to plaintiff, which, in view of the law, had not changed its character. He attempted to evade the statutes of the State, and thereby escape taxation.

Courts will not construe a statute so as to suffer it to be evaded. *People v. Utica Ins. Co.*, 15 Johns. 382; Broom's Leg. Max. 423. And a fraud upon, or evasion of a statute, will not be tolerated in a court of justice. *Stratton v. Herrick*, 9 Johns. 356; *Stratton v. Huble*, 9 Johns. 357; *Jackson v. Burgott*, 10 Johns. 461; *Bates v. Sutherland*, 15 Johns. 510; *Hearsey v. Boyd*, 7 Johns. 184. A fraud upon a statute is a violation of the statute. *Bank of U. S. v. Owens et al.*, 2 Pet. 536. Laws exempting property from taxation are to be strictly construed, and are to be restricted in their application to the subject matter in hand. *Cincinnati College v. State*, 19 Ohio 110; 3 Sandf., S. C. 409; 37 N. Y. 9, 21.

The pre-existing right of the State to require the plaintiff to bear his share of the public expenses, cannot be defeated by the effort of plaintiff to create a new right to the prejudice of the old one, for there is no legal principle to justify such a proceeding. Broom's Legal Maxims 282 (6 Am. ed.). *Rex v. Wead*, 31 E. C. L. R. 384; 15 Johns. 281; 17 Johns. 100.

Plaintiff had a duty to discharge to his State for the protection and security afforded to him and his property. This was a restraint on his right to evade the law, and where rights pertaining to the State and the individual clash, the individual rights must yield to that of the State. As between individuals the law will not permit a debtor to dispose of his property so as to defraud his creditors; much less will a debtor to the State be permitted to defeat the State from collecting the means to support and carry on the State government by practicing fraud on its laws. Therefore, upon the same principle, the property never changed its character toward the State, so as to become exempt from taxation.

If a person disposes of his property so as to reduce it within the amount allowed under the exemption laws of the State, and this is done for the purpose of defeating his creditors, the law will not protect him. The courts are no longer open to him. *Bracket v. Watkins*, 21 Wend. 68; *Manlon v. Burton*, 1 Cart. (Ind.) 39; *Ryan v. Whicter*, 6 Allen 292.

Even when the statute contains no express prohibition of such an attempt to evade it, it was an illegal and void act, being an attempt to contravene the policy of the public statute, and injurious to the State. 4 Hals. 352; 5 Hals. 87; 4 Peters 184; Chity Cont. 677 (9 Am. ed.). "To state such a case is to decide it. Public morals, public justice, and the well established principles of all judicial tribunals alike forbid the interposition of courts of justice to lend their aid to purposes like this." *Bartel v. Colemann*, 4 Peters 187.

The opinion of the court was delivered by

KINGMAN, C. J.—On the 28th February, 1870, the plaintiff in error had a large amount of money in current funds on deposit with Scott & Co., bankers of Leavenworth. On that day he

gave the bank a check payable to himself in legal tender treasury notes. He received the legal tender notes, enclosed them in a sealed envelope and immediately returned them thus sealed up to the bank; and three days afterward deposited all of said money as a general and ordinary deposit of current funds. The whole transaction was for the sole and express purpose of escaping taxation on the funds so used for the year 1870. Did he, by this transaction, so place his property as to relieve it from the burthens of taxation, and is he in a situation in which he can invoke the aid of a court to restrain the taxes levied upon those funds.

It is conceded that United States legal tender notes are exempt from taxation. It is also conceded that the transaction between plaintiff in error and the bankers is one, not in contravention of law of itself, but it is contended that the motive being to defraud the Government of its just dues and enable the plaintiff to escape the just burthens that society imposes on him enters into and vitiates the whole transaction, and that a court of justice sitting as a court of equity will not lend its aid for the accomplishment of any such purpose. And we think the argument a good one.

Reference is made to the principles stated in the brief of defendant in error and the authorities cited to sustain them.

The judgment is affirmed.

United States Circuit Court, Western District of Tennessee.

THE CITY OF MEMPHIS v. T. E. BROWN.

When contracts have been made, acts done, and labor performed in pursuance of a construction of a city charter, acquiesced in by all its citizens, such construction will be sustained if justified by any possible reading of the statutes.

In reference to all acts which a Municipal Corporation has power in any mode, and by any agency, to perform, it may bind itself by those agents whom it suffers to act for it, and in the modes which it sanctions by its own usages, unless such modes and agencies are prohibited by the charter.

Where the charter prescribes votes of shareholders, citizens, or directors, or other formalities as conditions precedent to the performance of acts, and such acts are performed without such formalities, third persons acting in good faith may presume all has been done which the charter demanded, and the corporation will not be suffered to prove its own negligence or willful dereliction to defraud innocent parties of their labor, property or money.

A municipal, like a private corporation, may in the ordinary course of its government, and in the conduct of improvements it is its duty to execute, make promissory notes, bonds, guarantees, and all other agreements necessary or